

# SENATE BILL No. 607

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33-8.

**Synopsis:** Bail and controlled substance offenses. Establishes a rebuttable presumption for purposes of admitting a defendant to bail, that: (1) there is a risk of nonappearance by the defendant; and (2) the defendant poses a risk of physical danger to another person or the community if the court finds probable cause to believe that the defendant committed a controlled substance offense classified as a Class A felony or Class B felony. Provides that, if a defendant has been charged with a controlled substance offense classified as a Class A felony or Class B felony, the court must impose at least one of certain described conditions. Requires a court that is setting the amount of bail  
(Continued next page)

**Effective:** July 1, 1999.

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**Rogers**

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January 21, 1999, read first time and referred to Committee on Judiciary.

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## Digest Continued

for a defendant who has been charged with a controlled substance offense classified as a Class A felony or Class B felony to take into account the amount of the controlled substance involved in the offense. Requires a court to carefully consider the necessity of setting a substantial amount of bail to assure a defendant's appearance in court or to assure the physical safety of another person or the community if the defendant has been charged with a controlled substance offense that is classified as a Class A felony or Class B felony.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 607

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-33-8-3.2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) A court may  
3 admit a defendant to bail and impose any of the following conditions  
4 to assure the defendant's appearance at any stage of the legal  
5 proceedings, or, upon a showing of clear and convincing evidence that  
6 the defendant poses a risk of physical danger to another person or the  
7 community, to assure the public's physical safety:  
8 (1) Require the defendant to:  
9 (A) execute a bail bond with sufficient solvent sureties;  
10 (B) deposit cash or securities in an amount equal to the bail;  
11 (C) execute a bond secured by real estate in the county, where  
12 thirty-three hundredths (0.33) of the true tax value less  
13 encumbrances is at least equal to the amount of the bail;  
14 (D) post a real estate bond.  
15 The defendant must also pay the fee required by subsection (d).



(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) The fee required by subsection (d).

(B) Fines, costs, fees, and restitution as ordered by the court.

(C) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

(D) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the

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1 risk exists.

2 (8) Impose any other reasonable restrictions designed to assure  
3 the defendant's presence in court or the physical safety of another  
4 person or the community.

5 **(9) If the defendant has been charged with a Class A felony or**  
6 **Class B felony described in IC 35-48-4, the court shall impose**  
7 **at least one (1) of the following conditions:**

8 (A) Require the defendant to submit to a search of the  
9 defendant's person, vehicle, residence, or other property  
10 the defendant has control over for the presence of a  
11 controlled substance (as defined in IC 35-48-1-9 for  
12 purposes of this subdivision) if a law enforcement officer  
13 has a reasonable suspicion that the defendant is violating  
14 a condition of the defendant's bail by possessing a  
15 controlled substance.

16 (B) Require the defendant to periodically undergo, at the  
17 defendant's expense, a laboratory chemical test (as defined  
18 in IC 14-15-8-1) or series of chemical tests as specified by  
19 the court to detect and confirm the presence of a controlled  
20 substance. The results of a test conducted under this clause  
21 must be submitted by the laboratory to the court and the  
22 prosecuting attorney's office.

23 (C) Require the defendant to avoid all contact with persons  
24 involved in the use, manufacture, growth, or distribution  
25 of controlled substances.

26 (D) Require the defendant to refrain from entering or  
27 remaining in places where controlled substances are being  
28 used, manufactured, grown, or distributed.

29 (E) Require the defendant to refrain from being physically  
30 present within:

31 (i) a two (2) block area of; or

32 (ii) a designated area near;

33 the location at which the Class A felony or Class B felony  
34 described in IC 35-48-4 allegedly occurred unless the  
35 defendant resides within the area.

36 (F) Require the defendant to refrain from being physically  
37 present within a public safety improvement area  
38 designated under IC 36-8-19.5-3 unless the defendant  
39 resides within the area.

40 (G) Require the defendant to refrain from using or  
41 possessing a pager, cellular phone, or other wireless  
42 communication device.

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**(H) Require the defendant to refrain from possessing a firearm, destructive device, or other dangerous weapon.**

**(I) Require the defendant to be physically present in:**

**(i) the defendant's residence; or**

**(ii) the residence of the defendant's third party custodian;**

**during periods set by the court unless the defendant is participating in an employment, an education, a counseling, or a treatment program authorized by the court.**

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-9-11.5.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(d) Except as provided by subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) for each bond or deposit under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit these fees to the board of trustees of the public employees' retirement fund for deposit into the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2). This subsection expires December 31, 1998.

(e) With the approval of the clerk of the court, the county sheriff may collect the bail and fees required by subsection (d). The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

**(g) For purposes of subsection (a), there is a rebuttable presumption that:**



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1           **(1) there is a risk of nonappearance by the defendant; and**  
 2           **(2) the defendant poses a risk of physical danger to another**  
 3           **person or the community;**  
 4           **if the court finds probable cause to believe that the defendant**  
 5           **committed a Class A felony or Class B felony described in**  
 6           **IC 35-48-4. A defendant may rebut the presumption established in**  
 7           **this subsection.**

8           SECTION 2. IC 35-33-8-4 IS AMENDED TO READ AS  
 9           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The court shall  
 10          order the amount in which a person charged by an indictment or  
 11          information is to be held to bail, and the clerk shall enter the order on  
 12          the order book and indorse the amount on each warrant when issued.  
 13          If no order fixing the amount of bail has been made, the sheriff shall  
 14          present the warrant to the judge of an appropriate court of criminal  
 15          jurisdiction, and the judge shall indorse on the warrant the amount of  
 16          bail.

17          (b) Bail may not be set higher than that amount reasonably required  
 18          to assure the defendant's appearance in court or to assure the physical  
 19          safety of another person or the community if the court finds by clear  
 20          and convincing evidence that the defendant poses a risk to the physical  
 21          safety of another person or the community. In setting and accepting an  
 22          amount of bail, the judicial officer shall take into account all facts  
 23          relevant to the risk of nonappearance, including:

- 24           (1) the length and character of the defendant's residence in the
- 25           community;
- 26           (2) the defendant's employment status and history and his ability
- 27           to give bail;
- 28           (3) the defendant's family ties and relationships;
- 29           (4) the defendant's character, reputation, habits, and mental
- 30           condition;
- 31           (5) the defendant's criminal or juvenile record, insofar as it
- 32           demonstrates instability and a disdain for the court's authority to
- 33           bring him to trial;
- 34           (6) the defendant's previous record in not responding to court
- 35           appearances when required or with respect to flight to avoid
- 36           criminal prosecution;
- 37           (7) the nature and gravity of the offense and the potential penalty
- 38           faced, insofar as these factors are relevant to the risk of
- 39           nonappearance;
- 40           (8) the source of funds or property to be used to post bail or to pay
- 41           a premium, insofar as it affects the risk of nonappearance; ~~and~~
- 42           **(9) if the defendant has been charged with a Class A felony or**



1        **Class B felony described in IC 35-48-4, the amount of the**  
2        **controlled substance involved in the offense; and**

3        ~~(9)~~ (10) any other factors, including any evidence of instability  
4        and a disdain for authority, which might indicate that the  
5        defendant might not recognize and adhere to the authority of the  
6        court to bring him to trial.

7        (c) **If the defendant has been charged with a Class A felony or**  
8        **Class B felony described in IC 35-48-4, the court shall carefully**  
9        **consider the necessity of setting a substantial amount of bail to**  
10       **assure the defendant's appearance in court or to assure the**  
11       **physical safety of another person or the community. However, if a**  
12       **defendant successfully rebuts the presumption established in**  
13       **section 3.2(g) of this chapter, the court must find:**

14        (1) **that there is a risk of nonappearance by the defendant; or**

15        (2) **by clear and convincing evidence that the defendant poses**  
16        **a risk of physical danger to another person or the community;**  
17       **before the court considers the necessity of setting a substantial**  
18       **amount of bail under this subsection.**

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